



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-904]

Certain Activated Carbon from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 24, 2011, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") results of redetermination pursuant to the CIT's remand order in Calgon Carbon Corporation, et al., v. United States, Consol. Court No. 09-00524 (February 17, 2011) ("Remand").¹

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, F.3d, Court No. 2010-1024, 1090 (Fed. Cir. December 9, 2010) ("Diamond Sawblades"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") covering the period of review ("POR") of October 11, 2006 through March 31, 2008, with respect to the separate rate margin assigned to Hebei Foreign Trade and Advertising Corporation ("Hebei Foreign") and the margin assigned to Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.,

¹ See Final Results Of Redetermination Pursuant To Court Remand, Court No. 09-00524, dated July 25, 2011, available at: <http://ia.ita.doc.gov/remands/index.html> ("Carbon Remand"). The previous action, Calgon Carbon Corporation, et al. v. United States, Court No. 09-00518 was "deconsolidated" which resulted in a caption change to Hebei Foreign Trade and Advertising Corporation., et al., v. United States, Court No. 09-00524 (CIT October 24, 2011) Slip Op. 11-134 (judgment).

and its affiliate² (collectively “Cherishmet”). See First Administrative Review of Certain Activated Carbon From the People’s Republic of China: Final Results, 74 FR 57995 (November 10, 2009) (“Final Results”) and accompanying Issues and Decision Memorandum (“IDM”) and Certain Activated Carbon From the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 74 FR 66952 (December 17, 2009) (“Amended Final Results”) (collectively “AR1 Final Results”).

EFFECTIVE DATE: Effective Date (October 24, 2011)

FOR FURTHER INFORMATION CONTACT: Robert Palmer, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-9068.

SUPPLEMENTARY INFORMATION:

In the first administrative review of the antidumping duty order on certain activated carbon from the PRC, the Department did not grant Hebei Foreign a separate rate, stating that record evidence demonstrated that Hebei Foreign’s separate rate company certification was certified by Mr. Wang Kezhang, who was not employed by Hebei Foreign, and, therefore, the Department could not consider the separate rates certification to have been properly certified on behalf of the company in accordance with the filing requirements of 19 CFR 351.303(g)(1).³ The CIT remanded to the Department to explain the requirements of 19 CFR 351.303(g)(1) and permit Hebei Foreign to attempt to find an alternative individual who fulfills the Department’s regulatory requirements regarding certifications if the Department determines that Mr. Wang was in a position to know the facts, but was not an employee in the sense required by the Department’s certification regulation.⁴

Moreover, in the AR1 Final Results, the Department valued hydrochloric acid (“HCl”)

² The Department found Ningxia Guanghai Cherishmet Activated Carbon Co., Ltd. and Beijing Pacific Activated Carbon Products Co., Ltd. (hereinafter referred to as “Cherishmet”) to be affiliated and a single entity in Final Results at 74 FR 57998.

³ See Final Results IDM at Comment 22.

⁴ See Remand at 9.

using World Trade Atlas (“WTA”) data for Cherishmet and valued carbonized materials using the WTA value for other cokes of coal. The CIT remanded to the Department to permit Cherishmet the opportunity to place HCl data on the record⁵ and remanded to the Department to address argument that imports under Indian HTS 2704.00.90 “Other Cokes of Coal” are not product-specific and “to select the best method for valuation of the input as possible.”⁶

Additionally, in the AR1 Final Results, the Department calculated a surrogate wage value in accordance with the regression-based methodology set forth in 19 C.F.R. 351.408(c)(3). In Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) (“Dorbest”), the U.S. Court of Appeals for the Federal Circuit (“CAFC”) held that the Department’s “{regression-based} method for calculating wage rates {as stipulated by 19 C.F.R. 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Tariff Act of 1930, as amended (the “Act”) (i.e. 19 U.S.C. § 1677b(c))}.”⁷ Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market economy countries that are both economically comparable to the NME at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department’s regulation requires the Department to use data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department’s labor regulation (19 C.F.R. 351.408(c)(3)). On June 21, 2011, the Department revised its labor calculation methodology for valuing an NME respondent’s cost of labor in NME antidumping proceedings.⁸ In Labor Methodologies, the Department found that the best methodology for valuing the NME respondent’s cost of labor is to use the industry-specific labor rate from the surrogate country. Additionally, the Department found that the best data source for calculating the industry-specific labor rate for the surrogate country is the data reported under “Chapter 6A: Labor Cost in

⁵ See Remand at 15.

⁶ See id. at 19.

⁷ See Dorbest, 604 F.3d at 1372.

⁸ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

Manufacturing” from the ILO Yearbook of Labor Statistics.⁹ Following Dorbest, the Department requested a voluntary remand for its labor rate calculations for Cherishmet in the AR1 Final Results. The CIT granted the Department’s request for a voluntary remand for its labor rate calculations for Cherishmet in the AR1 Final Results with instructions that the labor wage value be recalculated without reliance on the invalidated labor regulation.¹⁰

On July 25, 2011, the Department issued its final results of redetermination pursuant to Remand. Pursuant to Remand, we granted a separate rate to Hebei Foreign for the first administrative review period. Additionally, pursuant to the Dorbest ruling, Labor Methodologies and Remand, we revised the labor rate calculation methodology to comply with the CAFC’s interpretation of section 773 of the Act. We also recalculated the HCl surrogate value using prices from Chemical Weekly, and recalculated the carbonized material surrogate value using WTA Indian import statistics under the Harmonized Tariff Schedule number for coconut shell charcoal. The Department’s redetermination resulted in changes to the AR1 Final Results for Hebei Foreign’s margin from 228.11 percent to 16.35 percent and for Cherishmet’s margin from 16.84 percent to 2.95 percent. The CIT sustained the Department’s remand redetermination with respect to Hebei Foreign and Cherishmet on October 24, 2011.¹¹

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 24, 2011 judgment sustaining the Department’s remand redetermination with respect to Hebei Foreign and Cherishmet constitutes a final decision of that court that is not in harmony with the

⁹ See Labor Methodologies at 39063.

¹⁰ See Remand at 24-25.

¹¹ See Hebei Foreign Trade and Advertising Corporation., et al., v. United States, Court No. 09-00524 (CIT October 24, 2011) Slip Op. 11-134 (judgment).

Department's AR1 Final Results. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondents were reviewed.¹²

Amended Final Results

Because there is now a final court decision with respect to Hebei Foreign and Cherishmet, we are amending the AR1 Final Results to reflect the results of the above-described litigation. The revised dumping margins are as follows:

Exporter Name	Margin (percent)
Hebei Foreign Trade and Advertising Corporation	16.35
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ¹³	2.95

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from Hebei Foreign and Cherishmet based on the revised assessment rates calculated by the Department.

¹² Limited to Cherishmet. See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208, 70209 (November 17, 2010) ("Carbon AR2")

¹³ The Department found Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. and Beijing Pacific Activated Carbon Products Co., Ltd. to be affiliated and a single entity in Final Results at 74 FR 57998.

This notice is issued and published in accordance with sections 516A(c)(1), 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

_November 3, 2011_____

Date

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